

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/07/2004

CORAM

THE HON'BLE MR. JUSTICE V. KANAGARAJ
and
THE HON'BLE MR. JUSTICE S. ASHOK KUMAR

Habeas Corpus Petition No.443 of 2004

S.Anbukarasi ... Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary to Government,
Prohibition & Excise
Department,
For St. George,
Chennai - 9.

2. The District Magistrate,
and District Collector,
Cuddalore District. .. Respondents

Petition filed under Article 226 of the Constitution of India praying
for the relief as stated therein.

For petitioner : No appearance

For respondents : Mr. Abudu Kumar Rajarathinam
Government Advocate (Crl. side)

:O R D E R

(Order of the Court was delivered by V. KANAGARAJ,J.)

The wife of the detenu is the petitioner herein. She has come forward to file the above petition praying to issue a Writ of Habeas Corpus, calling for the records relating to the order in C4/13510/2004 dated 25.2.2004 passed by the first respondent herein, quash the same as illegal and further direct the respondents to produce the detenu, viz., Sundaram S/o Ayyakannu, who is now confined in the Central Prison, Cuddalore, before this Court and set him at liberty forthwith.

2. The detenu has been detained on the ground that she was a Bootlegger under the relevant provisions of Tamil Nadu Act 14 of 1982.

3. Heard Mr. Abudu Kumar Rajarathinam, learned government advocate on the criminal side with no representation made on the part of the petitioner.

4. Learned Government Advocate on the criminal side reports that there are 5 adverse cases registered against the detenu of which one is under Section 4(1-A)& 4(1)(Ada), of the T.N.P. Act, 1937.

5. On perusal of the records, this Court is able to come across a serious anomaly viz., non-application of mind on the part of the detaining authority.

6. So far as the non-application of mind on the part of the detaining authority is concerned, in para. 6 of the grounds of detention, it is stated by the detaining authority that there is an imminent possibility of the the detenu coming out on bail by filing bail applications in the Court, which statement shows that there is nonapplication of mind on the part of the detaining authority because when the detenu has not filed any bail application, the question of imminent possibility of his coming out on bail does not arise at all. Therefore, there is no material on record to show that the detaining authority has independently applied his mind without taking into consideration the statement of the sponsoring authority, and hence, on both these grounds, the order of detention gets vitiated.

7. This Court's attention is also drawn to a decision of the Apex Court rendered in *Rivadeneyta Ricardo Agustin v. Govt. of Delhi* reported in 1994 SCC (Cri) 354, wherein it is held:

"7.

8. The above statement merely speaks of a "possibility" of the detenu's release in case he moves a bail petition. It neither says that such release was likely or that it was imminent. Evidently, the statement falls short of the requirement enunciated by this Court in *Kamarunnissa*.

11. In these circumstances, we must hold that the principle enunciated by this Court in *Kamarunnissa v. Union of India* squarely applies and the order is liable to be quashed. It is accordingly quashed." Falling in line with the above decision of the Apex Court, since the present case is on similar set of facts and circumstances, this Court has to pass its order in the following manner :-

In result,

(i) the above Habeas Corpus Petition is allowed;

(ii) the detention order dated 25.2.2004 made in C4/13510/2004 by the second respondent herein is quashed;

(iii) the detenu, viz., Thiru.Sundaram S/o Ayyakannu, is directed to be set at liberty forthwith unless his detention is required in any other case.

Index:Yes

Internet:Yes.

Gr.

To

1. The Secretary to Government of Tamil Nadu,
Prohibition & Excise Department,
Fort St. George, Chennai - 9.

2. The District Magistrate and District Collector

Index:Yes

Internet:Yes.

Gr.

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